

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, SEPTEMBER 1, 2009

6 P.M. SPECIAL COUNCIL MEETING (Closed Session) – Conference with Legal Counsel – Anticipated Litigation: Initiation of litigation pursuant to subdivision(c) of Section 54956.9; one potential case

7 P.M. COUNCIL MEETING

CALL TO ORDER

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Christopher Moylan
Councilmember John Howe
Councilmember Ron Swegles
Councilmember Melinda Hamilton
Councilmember David Whittum
Councilmember Dean Chu

ABSENT:

None

STAFF PRESENT:

City Manager Gary Luebbers
Assistant City Manager Robert Walker
Senior Assistant City Attorney Kathryn Berry
Director of Community Development Hanson Hom
Director of Community Services David Lewis
Transportation and Traffic Manager Jack Witthaus
Director of Public Safety Don Johnson
Director of Public Works Marvin Rose
City Clerk Kathleen Franco Simmons

SPECIAL ORDER OF THE DAY

Mayor Spitaleri presented a Certificate of Commendation to *Destination: Home* for their dedication in working toward ending homelessness within the local community.

CLOSED SESSION REPORT

Vice Mayor Moylan reported Council met earlier this evening in closed session pertaining to: Conference with legal Counsel – Anticipated Litigation: Initiation of litigation pursuant to subdivision(c) of Section 54956.9; one potential case.

Vice Mayor Moylan stated no direction was given, and no action was taken.

PUBLIC ANNOUNCEMENTS

Councilmember Howe announced an off-duty Sunnyvale Public Safety Officer, Mark Cunha, was recently injured in an accident and is recovering. Councilmember Howe requested the Mayor send a note on behalf of the Council, wishing Officer Cunha a speedy recovery. Councilmember Howe also requested the city manager pass along best wishes from the Council, through the Director of Public Safety, for Cunha's speedy recovery.

Councilmember Howe announced the upcoming council candidate forums are scheduled for Thursday, September 24 and Tuesday, October 13, 2009. Both forums will be held at 7 p.m. in the Council Chambers and will be broadcast on the local cable channel KSUN (Channel 15). Councilmember Howe explained if an additional last night forum is deemed necessary by the moderator, it will be held on November 2, 2009 in the Council Chambers at 7 p.m. Should the community have suggestions for questions of the candidates, they may email their questions to the moderator at: svcandidate@aol.com.

Councilmember Swegles announced the Sunnyvale Farmers Market will be temporarily relocated to the Sunnyvale Cal Train parking lot, which is located at Evelyn and Frances Avenue. The market is being temporarily relocated due to the Murphy Street project.

Councilmember Swegles announced the 2009 State of the City celebration will be held on September 26 at the Heritage Park Museum. The event will highlight the Mayor's State of the City address, followed by a presentation of a number of community awards.

Councilmember Swegles announced Sunnyvale resident, Evelyn Lundstrom, will turn 91 in a few days.

Councilmember Chu announced the Bay Bridge will be closed over Labor Day weekend.

Mayor Spitaleri announced he signed a proclamation in honor of *Family Day*, scheduled for September 28 this year, and will present it to The National Center on Addiction and Substance Abuse (CASA).

Theresa Barnea invited Council to the 5th Annual Applied Materials Silicon Valley Turkey Trot, held on Thanksgiving morning.

Gary Effren, CFO from Akeena Solar, announced they will be sponsoring the second annual Mayor's Cup Challenge as part of the Turkey Trot.

Manuel Valerio, spoke about the benefits of the Turkey Trot for the community and the non-profit organizations that benefit from the revenue received from this event.

Vice Mayor Moylan requested a fraction of the body of Councilmembers in attendance at the Turkey Trot be counted in order to make the competition fair due to varying number of councilmembers among the cities. Vice Mayor Moylan also requested that the route distance be correctly measured this year, because last year the race was much longer than a 5K race.

Vice Mayor Moylan encouraged Akeena Solar to consider the branding opportunity associated with the City's name of Sunnyvale, should they need to relocate or expand in the future.

CONSENT CALENDAR

Councilmember Hamilton removed Item 1.P from the Consent Calendar.

MOTION: Vice Mayor Moylan moved and Councilmember Howe seconded to approve the Consent Calendar with the exception of Item 1.P

Councilmember Swegles left the dais.

VOTE: 6-0 (Councilmember Swegles absent)

Councilmember Swegles returned to the dais.

1.A. Approval of Council Meeting Minutes of August 11, 2009

1.B. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

1.C. RTC 09-230 List of Claims and Bills Approved for Payment by the City Manager – List No. 466, 467 and 468

Staff Recommendation: Review the attached lists of bills.

1.D. RTC 09-232 Approval of an Agreement with the Franchise Tax Board to Exchange Data Related to Business Licensing

Staff Recommendation: Alternative No. 1: Approve an agreement with the Franchise Tax Board to exchange data related to business licensing.

1.E. RTC 09-236 Agreement Between the City of Sunnyvale and Silicon Valley Leadership to Provide Leadership Sunnyvale Training Program.

Staff Recommendation: Approve Attachment A, *Agreement between the City of Sunnyvale and SVL*, and Attachment B, *Outside Group Funding Agreement between the City of Sunnyvale and Silicon Valley Leadership for Fiscal Year 1009/10*, and authorize the city Manager to enter into said Agreements.

Contracts

1.F. RTC 09-221 Renewal of Contract for Juvenile Probation Services

Staff Recommendation: Alternative No. 1: Authorize the City Manager to sign the Agreement with the County of Santa Clara for Probation Services, to provide a Deputy Juvenile Probation Officer exclusively for Sunnyvale youth for fiscal 2009-2012.

1.G. RTC 09-223 Amend an Existing Contract with RMC Water & Environment to Provide Additional Consultant Services for Emergency By-pass Pumping Plan Study Project (F0907-09)

Staff Recommendation: 1. Amend an existing contract with RMC Water & Environment by increasing the not-to-exceed amount to \$99,900; and 2. Approve a contingency in the amount of \$4,000, for a total contingency of \$10,000.

1.H. RTC 09-225 Award of a Contract for Miscellaneous Piping Supplies (F0805-82)

Staff Recommendation: 1. Award a one-year contract to Roberts and Brune Company of San Jose for piping supplies; and 2. Delegate authority to the City Manager to exercise an option to extend the contract for one additional one-year period.

1.I. RTC 09-224 Award of a Contract for Chronic Toxicity Testing Services at the Water Pollution Control Plant (F0805-70)

Staff Recommendation: 1. Award a contract, in an amount not to exceed \$290,000, to Pacific EcoRisk Environmental Consulting and Testing to provide chronic toxicity testing services for a three year period; 2. Delegate authority to the City Manager to exercise an option to extend the contract for two additional one-year periods.

1.J. RTC 09-222 Authorization to Modify an Existing Contract for Technical Services Relating to the City's NPDES Permit and WPCP Operations Support (F0908-13)

Staff Recommendation: Modify an existing contract with EOA, Inc., by increasing the total not-to-exceed value of contract by \$170,000, making the total value of the six year contract \$2,349,000.

1.K. RTC 09-226 Award of Bid No. F0812-39 for Oxidation Pond Vegetation Removal at the Water Pollution Control Plant and Approval of Budget Modification No. 4

Staff Recommendation:

1. Award a contract, in substantially the same form at the attached draft and in amount not to exceed \$102,165 to Aquatic Environmentals, Inc. for Oxidation Pond Vegetation Removal at the WPCP;
2. Approve a project contingency in the amount of \$15,325; and
3. Approve Budget Modification No. 4.

1.L. RTC 09-234 Authorization to Modify an Existing Contract for Traffic Signal Work (F0908-11)

Staff Recommendation: Modify an existing contract with Team Econolite, in substantially the same form as the attached Draft Purchase Order, by increasing the total not to exceed value of the contract by \$40,000, to a total of \$140,000.

Contracts: Sunnyvale Works!

1.M. RTC 09-233 Award of Sunnyvale Works! Bid No. F0907-04 for Raynor and Ortega Water Well Connections to Transmission Main and Approval of Budget Modification No. 6

Staff Recommendation:

1. Award a contract, in substantially the same format as the attached draft and in the amount of \$765,300 to M Squared Construction, Inc. for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met.
2. Approve a project contingency in the amount of \$76,530; and
3. Approve Budget modification No. 6 to move funds from FY 2010/2011 to FY 2009/2010 for this project.

1.N. RTC 09-231 Award of Sunnyvale Works! Bid No. F0907-01 for Hamilton Plant Mechanical and Electrical Reconstruction and Approval of Budget Modification No. 5

Staff Recommendation:

1. Award a contract, in substantially the same format as the attached draft and in the amount of \$688,300, to Anderson Pacific Engineering Construction, Inc. for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met.
2. Approve a project contingency in the amount of \$68,830
3. Approve Budget Modification No. 5 appropriating \$66,995 from the Water Fund Rate Stabilization Reserve for this project.

1.O. RTC 09-237 Award of Sunnyvale Works! Bid No. F0907-03 Slurry Seal 2010

Staff Recommendation:

1. Award a contract, in substantially the same format as the attached draft and in the amount of \$125,285, to Graham Contractors, Inc. for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met.
2. Approve a project contingency in the amount of \$12,529.

Other Items

1.P. RTC 09-229 Revision of San Miguel Sports Field Master Plan to Accommodate New Classrooms and Related Facilities

Councilmember Hamilton stated she pulled this item in order to comment on it prior to the vote.

Councilmember Whittum requested staff supply Council with a more legible copy of the Master Plan depiction as Attachment A.

Councilmember Hamilton verified with Director of Parks and Recreation David Lewis that within the Parks of the Future Study, open space at schools was counted as part of the open space ratio per resident.

Councilmember Hamilton stated she will vote against this item because of the size of the project and lack of park space existing in the City. Councilmember Hamilton spoke about past projects where open space was lost and suggested the crowding issues of the schools be dealt with by other means rather than continuing to lose open space. Councilmember Hamilton suggested schools build upwards in order to accommodate the overcrowding issues.

MOTION: Councilmember Chu moved and Councilmember Swegles seconded to approve Alternative 1: Approval of the Proposed Master Plan for San Miguel Elementary School sports field to include the new classrooms per Attachment A.

Councilmember Whittum stated he agrees with Councilmember Hamilton as the City has an issue with open space, which has not been dealt with adequately. Councilmember Whittum stated he will support the motion regardless, because turning this project down is not one of the strategies the City should use to create more open space.

Councilmember Chu stated he also is concerned over the loss of open space; however, the school district has a need to add classrooms. The school district presently cannot afford any option other than to add additional classrooms.

Vice Mayor Moylan stated this project is the first that has come to Council since the Parks of the Future study, which highlighted the lack of open space in the City. Vice Mayor Moylan suggested schools reopen their previously closed, and rented out, school sites. Vice Mayor Moylan explained that the closed sites were not sold outright because the schools wanted to have the possibility of reopening their sites at a later time. Vice Mayor Moylan stated he will not support the motion as it is time to reopen the closed schools and save open space in Sunnyvale.

Councilmember Hamilton stated she is aware of one school that could not be reopened as they would not meet current standards for field space. Councilmember Hamilton stated it is not her intent to have an adversarial relationship with the school district in voting against this project; rather she would encourage the City and the school district to work together to find a sustainable solution to the school's need for additional space due to overcrowding.

VOTE: 4-3 (Vice Mayor Moylan and Councilmembers Howe and Hamilton dissented)

**1.Q. RESOLUTION Request for Authorization by Resolution for the City Manager to
RTC 09-220 Execute a Maintenance Agreement for the Borregas Avenue
Bicycle / Pedestrian Bridges**

Staff Recommendation: Alternative No. 1: Approve the attached resolution and authorize the city manager to execute the Maintenance Agreement for the Borregas Bicycle / Pedestrian Bridges project with the California Department of Transportation.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

Councilmember Chu inquired as to how many projects have started and how much has been saved from the Sunnyvale Works projects. Director of Public Works Marvin Rose stated staff is currently compiling that information and will submit it to the city manager for the bi-weekly report. Director Rose stated the amount saved is significant and on average the cost has run about 28 percent under engineering estimates. City Manager Gary Luebbers stated a public release will also be coming out shortly.

PUBLIC COMMENTS

Mayor Spitaleri announced he received 11 public comments cards; however, only five may be heard prior to the Public Hearing and the rest will have an opportunity to speak afterwards.

Sue Muller spoke about the recommendation in the Park of the Future study to demolish three homes in order to expand the Orchard Gardens Park area. Muller expressed concerns regarding safety in the area as the existing homes create an isolated area of the park.

Pamela Putnam expressed concern for individuals in wheelchairs in the Orchard Gardens area because the area does not have sidewalks or ramps. Putnam also spoke of safety concerns in the Orchard Gardens Park area and requested the shrubbery at the park be trimmed.

Charles Cegelski spoke of safety concerns in the Orchard Gardens park area. Cegelski requested the City relocate the barbecue area away from the homes. Cegelski spoke of a previous issue in which his back fence caught on fire from someone using the barbecue. Cegelski also expressed concern over noise issues that arise from events going on at the park, which is adjacent to his backyard.

Mark Dobson spoke about his business, which offers an alternative form of transportation considered to be environmentally friendly. Dobson described benefits his transportation vehicles would provide for City employees and Public Safety Officers.

Patrick Meyering expressed concerns over the late September date of the State of the City event, citing its close proximity to when the mail in ballots for this year's election are mailed out. Meyering stated he is concerned the State of the City event is set on a date very close to the election and the Mayor is up for re-election. Meyering stated a public hearing was not held regarding the selection of the State of the City date. Meyering stated that the State of the City is listed on the Mayor's campaign website and cited concern that this event is being funded with taxpayer's money, yet it is very similar to a campaign event for the Mayor. Meyering requested Council consider correcting this issue by either postponing the event for six weeks until after the election; asking the Mayor to reimburse the City's taxpayers \$62,000 for the event or to approve allowing all candidates to speak at the event for an equal amount of time.

Mayor Spitaleri responded that his State of the City address in 2008 was also held in September.

Councilmember Hamilton responded that the State of the City address is a City event and is not a campaign event. Councilmember Hamilton explained that it is the Mayor's event and up to each Mayor's discretion as to when it will be held. Councilmember Hamilton stated that Meyering is running for the position of Mayor, and in the interest of full disclosure, he should have stated that during his comments.

Vice Mayor Moylan asked Mr. Meyering on what basis he could claim that his comments were not a thinly disguised campaign event. Meyering responded that he is not taking any money from the City of Sunnyvale. Meyering stated his concern is over the date for the State of the City and its close proximity to the election.

Councilmember Howe stated the City has normal business that it needs to conduct and the State of the City is one of those items that are conducted annually as City business. Councilmember Howe stated concern that Meyering is making an issue of this as a political move for his campaign.

Councilmember Whittum stated Meyering made a good suggestion that all candidates should be able to speak at the State of the City event. Councilmember Whittum stated this would be a fair solution.

Mayor Spitaleri announced that the remainder of the speakers will be called upon after the Public Hearing section of the meeting.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RTC 09-235 Overview of the City of Santa Clara Draft Environmental Impact Report for the Proposed 49ers Stadium

Director of Community Development Hanson Hom presented the staff report.

Councilmember Hamilton inquired whether staff's concerns regarding several intersections had been answered adequately by the City of Santa Clara. Director Hom stated staff is concerned that that a number of their comments have not been adequately responded to by the City of Santa Clara. Transportation and Traffic Manager Jack Witthaus responded that staff has a number of concerns over traffic issues as identified in the City's Letter of Notice of Preparation. The City of Santa Clara has not adequately addressed these concerns including certain intersections and corridors that staff asked to be analyzed.

Councilmember Hamilton confirmed with Director Hom that staff is very concerned with parking issues. The City of Santa Clara is assuming that much of the parking requirement will be satisfied by joint use agreements with adjacent businesses and the feasibility of that concept is an issue for which staff would like to receive further analysis.

Councilmember Hamilton verified with Director Hom that staff is not aware of satisfying parking requirements by virtue of joint use agreements; however, if adjacent businesses agree to joint use of their parking, that would solve the parking issues. Hom stated staff questions the feasibility for the City of Santa Clara to work with future developments as well as existing developments to reach joint use agreements.

Councilmember Hamilton questioned whether it is typical for a project of this type to have a specific requirement that all the parking be within a 15 to 20 minute walking distance from the stadium. Director Hom stated the general thought is that a person is willing to walk 15 to 20 minutes to an event; however, he is not sure if that would also apply to a football game.

Councilmember Hamilton questioned the need for up close parking for tailgate activities and questioned the feasibility of surrounding businesses wanting that to occur in their parking lots. Director Hom agreed that would raise questions of feasibility.

Councilmember Chu inquired if staff has emphasized that pedestrian traffic needs to be separated from vehicle traffic as much as possible. Manager Witthaus responded that staff has not made that suggestion in their initial comments; however, the document from Santa Clara does present the basis for a pedestrian plan and discusses how pedestrians would be handled. Manager Witthaus explained that large flows of pedestrian traffic are addressed in the traffic analysis. One feature of the project is to close a portion of Tasman Drive from Great America Parkway to Centennial Drive in order to accommodate large numbers of pedestrians in that area. Staff has not recommended that any parking facilities be constructed.

Councilmember Chu stated that it would make sense for a pedestrian over-crossing to be constructed on the west side of Great America Parkway due to the volume of cars that would utilize that street. Councilmember Chu stated this area is connected to the Bay Trail and he suggested using this opportunity to meld into the goals of the Bay Trail.

Councilmember Chu questioned whether any consideration has been given to review of the overpasses located at Fair Oaks/237 interchange and Fair Oaks/101 freeway, as they are quite old and may not be able to accommodate the capacity of pedestrian traffic that would be generated from this project. Manager Witthaus responded staff requested the locations be reviewed; however, staff has not received a response. Staff will reiterate the need for that area to be analyzed.

Councilmember Whittum inquired as to mitigation of traffic impacts with regard to the Wildwood Intersection Improvement Project. Manager Witthaus stated that there is an overarching conclusion by City of Santa Clara that because the proposed facility will only hold short-term events on a limited number of days, the project will not be required to contribute to any roadway improvement mitigations, so the project will not be making any contributions, and Santa Clara is not proposing any mitigation beyond what is already funded for the roadway system.

Councilmember Whittum inquired whether the number of events being proposed will be economically viable without having to add more events. Director Hom responded that staff is not aware of an economic analysis for the proposed facility and staff has not performed one.

Councilmember Whittum verified with Manager Witthaus that the City of Santa Clara's primary mitigation is their traffic management plan, which would be put into place during events. Manager Witthaus explained the traffic plan proposal would include road closures, and officer controlled checkpoints for residents only. Staff is concerned over the language in the proposal and where the resources for this control would come from.

Councilmember Whittum questioned whether it might be prudent to present the argument that it would be financially more economical to fix intersections as opposed to paying yearly for additional security. Councilmember Whittum verified with Manager Witthaus that staff will comment on the possible impacts from the intersection of Lakebird and Lawrence. The intersection is mentioned, but not consistently through the document.

Councilmember Whittum verified with Director Hom that seismic risk is evaluated through California Environmental Quality Act (CEQA).

Councilmember Hamilton verified with Director of Public Safety Don Johnson that the City of Santa Clara plans to obtain additional Public Safety coverage by contracting with officers directly and not through the City. Director Johnson stated that possibility does not set well with him and exposes the City to unnecessary liabilities. Councilmember Hamilton verified with Director Johnson that the City of Santa Clara is basically looking to hire Sunnyvale Public Safety Officers as off-duty security.

Councilmember Swegles verified with Manager Witthaus that staff has requested the City of Santa Clara analyze light rail use versus parking closer to the stadium.

Public hearing opened at 8:21 p.m.

Tap Merrick questioned what the end result would be on the City if the Sunnyvale Public Safety Officers were to start working during their off hours as proposed by the City of Santa Clara. He questioned whether the City would need to hire more officers; the potential for additional injuries to occur due to overworking, and whether it would reduce officer availability. Merrick expressed concerns regarding Hexagon Traffic Consultants and their competency level. Merrick noted concern over a possible increase in south bay residents attending football games due to the closer proximity of the stadium, which could create different traffic patterns. Merrick stated he is very concerned over tailgating parties in parking lots and the amount of drinking that would occur at the football games.

Councilmember Swegles stated he wanted to respond to Merrick's concern as to whether public transportation would be used for getting to the games. Councilmember Swegles stated from his experience of attending sporting events, he has identified that public transportation is well utilized.

Vice Mayor Moylan explained that the purpose of this item is to gather public comments along with Council comments and send them to the City of Santa Clara. Council will not be taking any action on this item at this time.

Werner Gans stated concerns over the Environmental Impact Report (EIR) and stated there was not enough time spent to perform an adequate review. Gans stated it is important that Sunnyvale staff is given an extension in order to allow enough time for a through review. Gans requested the city manager and the mayor to get involved if the City of Santa Clara does not agree to the extension.

Jim Griffith, member of Danbury Place Homeowners Association, expressed concerns from some of the residents of Danbury Place regarding the effect of the proposed stadium on their neighborhood as well as traffic concerns. Griffith stated he supports the stadium but there is not enough information known at present as to whether this facility will have a negative or positive effect on Sunnyvale. Griffith stated he would like the City of Santa Clara to increase the scope of the EIR because currently it stops at the Sunnyvale border. Griffith requested staff encourage the City of Santa Clara to increase their scope for the EIR.

Arthur Schwartz stated Wildwood Avenue needs to be closed off in order to keep the area clear of those using the street as a bypass. Schwartz expressed concern regarding promoting the Bay Trail as an access route to the stadium because that could become a disaster for the area and trails due to the volume of those using the trail. Schwartz requested any recommendation of usage of the trails should be avoided.

Public hearing closed at 8:33 p.m.

Mayor Spitaleri reiterated Vice Mayor Moylan's earlier reminder that the purpose of this agenda item is to gather public input and Council comments and forward them to the City of Santa Clara.

Councilmember Whittum suggested that a parking permit system might be a parking mitigation effort worth considering.

Councilmember Whittum suggested that the right of way properties near Fair Oaks and 237, which are close to light rail, might be feasible locations for a parking garage, which could also serve as helpful mitigation for the parking needs.

Councilmember Howe verified with Director Hom that the minimum EIR review period, as required by CEQA, is 45 days, which the City of Santa Clara has granted to City of Sunnyvale. Councilmember Howe inquired as to how long it would take to do a complete job of review. Director Hom responded that staff has requested a couple of additional weeks in order to provide more comprehensive comments; however, staff is prepared to supply full comments within 45 days. Director Hom explained that an additional concern is whether the City of Santa Clara retains October as the date for the final EIR, because that would give City staff a very short amount of time to submit comments on the final EIR. Therefore, staff will request additional time for the final EIR as well.

Councilmember Howe verified with Director Hom that the letter to Santa Clara requesting more time was sent last week; however, the City has not received a response yet.

Councilmember Howe verified with Senior Assistant City Attorney Kathryn Berry that Council may request additional time from the City of Santa Clara.

Councilmember Hamilton requested the mayor and city manager express to the City of Santa Clara, Council's desire for additional time due to a number of items in the document that have not been addressed.

Councilmember Hamilton stated it is not the City of Sunnyvale's issue to mitigate traffic; rather it is the City of Santa Clara who needs to find solutions to these issues. Councilmember Hamilton expressed concern over the City possibly being asked to assist with building a parking garage.

Councilmember Whittum clarified that his direction was to let the City of Santa Clara know that mitigation efforts are needed, and not to provide mitigation solutions. Councilmember Whittum stated it is a good idea for Council to state what possible mitigations they would like to see, because in the final EIR, the City of Santa Clara may need to analyze those mitigations and include them in their project. Councilmember Whittum explained that if the City of Sunnyvale identifies a significant impact, such as parking, then that impact has to be answered by the project proponent.

MOTION: Councilmember Howe moved and Councilmember Whittum seconded to support staff's request for an extension of two additional weeks in order to send comments to the City of Santa Clara on the draft EIR.

Councilmember Hamilton verified with Councilmember Howe that his motion includes a letter from the mayor that the Sunnyvale City Council is requesting an additional two weeks to submit their comments.

Director Hom stated the letter that staff sent to the City of Santa Clara requested a comment extension period, in addition to a request that a public hearing be held.

Councilmember Howe stated he is reluctant to request the City of Santa Clara hold a public hearing, but it is very appropriate to request extra time for City staff.

Mayor Spitaleri stated it would be appropriate for the city manager and himself to set up a meeting with the City of Santa Clara's mayor and city manager to express the concerns of staff and Council.

FORMAL AMENDMENT: Councilmember Whittum moved and Councilmember Hamilton seconded the motion that it is the sense of the Council that there should be a public hearing held by the project proponent on the draft EIR.

Councilmember Whittum stated this is a very large project and public input is necessary. Councilmember Hamilton agreed.

VOTE on FORMAL AMENDMENT: 6-1 (Councilmember Howe dissented)

Restated MAIN MOTION: Councilmember Howe moved and Councilmember Whittum seconded to support staff's request for an extension of two additional weeks to comment to the City of Santa Clara on the draft environmental impact report.

VOTE on MAIN MOTION: 7 - 0

3. **ORDINANCE** **2009-0403: Application for 25 parcels in Tract 2064 bounded by Bobolink Circle and Bobwhite Avenue in an R-0/S (Low Density Residential/Single Story) Zoning District. Introduction of an Ordinance to allow permanent status of a Single-Story Combining District.**
RTC 09-227

Director Hom presented the staff report.

Vice Mayor Moylan inquired if the owner of the large property was included in the application. Director Hom stated he is not aware if the property owner of the large property is part of the application or not.

Public hearing opened at 8:45 p.m.

No speakers.

Public hearing closed at 8:45 p.m.

MOTION: Councilmember Howe moved and Councilmember Hamilton seconded to approve the rezoning to apply the Single Family Story Combining District as proposed by the applicant.

VOTE: 7-0

Mayor Spitaleri inquired if the ordinance needed to be read and Senior Assistant City Attorney Berry explained that Council can choose to waive the reading of the ordinance and it will be brought back for a second reading.

4. **RTC 09-228** **Board and Commission Appointments**

Assistant City Manager Robert Walker presented the staff report.

Public hearing opened at 8:47 p.m.

No speakers.

Public hearing closed at 8:47p.m.

City Clerk Katherine Franco Simmons presented the applicants and vacancies.

Board of Building Code Appeals (3 vacancies)

Longest term expiring 6/30/2012

Pedro Baltar

VOTE:7-0

City Clerk Kathleen Franco Simmons announced Pedro Baltar has been appointed to the Board of Building Code Appeals with a term expiring June 30, 2012.

Board of Library Trustees (1 vacancy)

Term expiring 6/30/2013

Connie Brookner

VOTE: 1-0 (Councilmembers Whittum, Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Howe, and Hamilton abstained)

Thomas Flaherty

VOTE: 7-0

Jill Shanmugasundaram

VOTE: 3-0 (Mayor Spitaleri, Councilmembers Chu, Howe, and Hamilton abstained)

Mei-Ling Stefan

VOTE: 3-0 (Councilmembers Swegles, Chu, Howe, Hamilton abstained)

City Clerk Kathleen Franco Simmons announced Thomas Flaherty has been appointed to the Board of Library Trustees with a term expiring June 30, 2013.

Housing and Human Services Commission (6 vacancies)

Longest term expiring 6/30/2013

Hannalore Dietrich

VOTE: 7-0

City Clerk Kathleen Franco Simmons announced Hannalore Dietrich has been appointed to the Housing and Human Services Commission with a term expiring June 30, 2013.

5. RTC 09-238 League of Cities Peninsula Division Election of Officers.

Assistant City Manager Walker presented the staff report.

Councilmember Swegles verified with Assistant City Manager Walker that each vote will be taken separately. Councilmember Swegles stated he will recuse himself when the vote for Santa Clara is before Council, because he is one of the nominees.

Councilmember Whittum stated he will abstain from the Santa Clara vote and clarified with Councilmember Swegles that he will actually be abstaining from the president vote and not the Santa Clara vote.

Public hearing opened at 8:56 p.m.

No speakers.

Public hearing closed at 8:56 p.m.

MOTION: Councilmember Howe moved and Councilmember Chu seconded to cast the City's vote for League Peninsula Division Officers: President, Vice President, Secretary-Treasurer, and Board Director as one vote, as follows:

- President: Ron Swegles, Councilmember, Sunnyvale
- Vice President: Barbara Pierce, Councilmember, Redwood City
- Secretary Treasurer: Steve Tate, Mayor, Morgan Hill
- League Board Director: Joe Pirzynski, Councilmember, Los Gatos

Councilmember Chu stated as a prior president of the league, he endorses Councilmember Swegles as the next president of the league.

VOTE: 6-0 (Councilmember Swegles abstained)

MOTION: Councilmember Howe moved and Councilmember Hamilton seconded the motion to authorize the Mayor, or his designee, to cast the City's vote for League Peninsula Division At-large Member (San Mateo County) at his discretion for the nominee he determines to be most qualified.

Vice Mayor Moylan stated he would prefer that Council not vote on this position because it does not seem right that Council should vote on another county's At-large Member. Many Councilmembers do not even know the people running for this position. Vice Mayor Moylan stated he will not support the motion.

Councilmember Chu stated he does know one of the people running, Rich Garbarino who is a Councilmember for the City of South San Francisco. Councilmember Chu stated he supports the motion allowing the Mayor to use his discretion to cast a vote for the most qualified.

VOTE: 4-3 (Vice Mayor Moylan and Councilmembers Whittum and Hamilton dissented)

MOTION: Councilmember Hamilton moved and Councilmember Howe seconded the motion to cast the City's vote for League Peninsula Division At-large Member (Santa Clara County) for Chuck Page, Mayor of Saratoga.

Councilmember Hamilton said her choice was based on attempting to evenly distribute representation, and felt it was fair to include a city that was not otherwise represented.

VOTE: 6-0 (Councilmember Whittum abstained)

PUBLIC COMMENT (Continued)

Tap Merrick stated he has stopped receiving notification from the City about City Council and Planning Commission meetings. Merrick stated the City has progressively provided its citizens with less information, Merrick cited examples of the reduced noticing for current projects including the limited notification to Birdland residents regarding the Kaiser project, in which only one-sixth of the neighborhood was notified. He stated no local meetings were held regarding Kaiser.

Councilmember Swegles verified with Merrick that there are approximately 500 households within the Birdland neighborhood.

Councilmember Chu explained in 2004, he was part of an effort to increase notification at the Planning Commission level for land use but the net result was only a five percent increase in responses; therefore, the notification was brought back to the level prior to initiating the increase in notification.

Merrick stated a larger turn-out would have occurred with better notification and it should not depend on one person in a neighborhood to get the word out.

Daisy Anzoategui stated she is in charge of the Sunnyvale Town Center Project and explained that the construction team has done a great job on the center so far. Anzoategui stated they were surprised when the developer, REEF, shut down the project so abruptly earlier this year. Anzoategui requested Council's assistance in getting the contractors paid by REEF. Anzoategui also requested Council not approve REEF's future request for approval to continue working on the project.

Mayor Spitaleri verified with Anzoategui that the contractor has a lien on the property for \$16 million; however, REEF actually owes \$18 million to Devcon Construction and the subcontractors.

Vanessa Chow, project manager for Devcon Construction, spoke about the hard work they have put in to meet the requirements. Chow requested Council not approve REEF's future request to continue to work on the project.

Mike Jurewicz, Chief Executive Officer of Sprig Electric, stated they were a subcontractor for the Sunnyvale Town Center project. Jurewicz stated his company is owed over one million dollars from work they completed over a year ago. Jurewicz requested the City intervene immediately in any way they can to assist Devcon Construction and the subcontractors in order that they may remain solvent and in business. Jurewicz also requested Council not grant REEF's request to continue working without first paying Devcon and all the subcontractors who have worked on this project.

Weldon Ofill, subcontractor on the Town Center Project, stated Devcon and all the subcontractors worked diligently on the project and would like to see it finished. Ofill requested Council intervene with REEF to pay Devcon and the subcontractors and keep them on the job so that it may be finished.

Rick Wilkinson, Gayle Manufacturing Company, stated they have over one million dollars worth of fabricated structural steel sitting in their yard waiting for construction of the theatre at the Town Center for which they have not been paid. Wilkinson encouraged Council to assist with getting Devcon construction and all the subcontractors paid, and to maintain Devon Construction and Sand Hill properties when the project starts back up.

Penny Kelly, candidate for City Council, stated Council previously promised to sell the three homes in the Orchard Park subdivision in order to enlarge the park and make the area safer. Kelly requested Council retain their promise and tear down the houses and enlarge the park.

Chet O'Donnell, plastering contractor, stated Devcon is the best contractor in the valley. O'Donnell requested Council find a way to get the project started again, keep Devcon on the project, and get the subcontractors paid. As time passes, the project will cost more as material warranties will begin to expire.

David Heslop, Vice President of Operations for Preston Pipelines, stated they are a subcontractor on the Town Center project and are a local company, as is Devcon. Heslop stated Devcon is a superior contractor and should be brought back on this project. Heslop stated they would like to see the subcontractors get back to work.

Arthur Schwartz stated he supports the comments made by the contractors regarding the Sunnyvale Town Center. Schwarz stated it would be a loss not to pick up the project and begin where it left off.

Mayor Spitaleri responded that it is the goal of the Council to see the Sunnyvale Town Center project completed by the best team available. Mayor Spitaleri stated the city manager, city attorney, and Council will do what they can to make sure this project is completed.

Vice Mayor Moylan requested the city manager to provide a response to public comments at the next Council meeting regarding the three main issues expressed this evening during public comments. The responses should include public safety concerns at the park, the public noticing issue, and the Sunnyvale Town Center project. City Manager Gary Luebbbers agreed.

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

None.

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Councilmember Howe requested the downtown jazz series be placed on the September 29, 2009 Council meeting agenda as an item that Council could take action on; however, no staff report would be needed.

Mayor Spitaleri agreed.

Councilmember Howe stated he recently appealed a decision of a hearing officer at Club La Ronda, and inquired when the item will go before the Planning Commission. Director Hom responded that staff will return to Council with the exact date. Councilmember Howe requested staff provide to Council the date and the appeal options available within the week.

Councilmember Chu stated last week Council received a letter from the Valley Transportation Authority (VTA) regarding reorganization of the groupings. Councilmember Chu requested this item be placed on the next Council agenda for discussion. Mayor Spitaleri agreed and City Manager Luebbbers stated he will review the agenda and find the proper spot for this discussion on the next Council meeting agenda.

Vice Mayor Moylan explained the VTA is still trying to transfer some of the representation for Sunnyvale, Milpitas, and the other north county cities to Morgan Hill and Gilroy in order to give them a guaranteed seat on the VTA board. Milpitas is currently supporting this action because for them, less representation is better than no representation, which is what would happen if they were put together with Morgan Hill and Gilroy. Vice Mayor Moylan stated Council's previous action stated they do not support grouping and that action is still Council's position.

Councilmember Chu stated he requested this item be placed on the agenda because the City of Sunnyvale was specifically asked by the VTA to participate in discussions regarding grouping, and Council will need to decide if they wish to participate in those discussions.

STAFF: City Manager Luebbbers stated the one-stop center will now be open during lunch hours and later in the month, they will also be open two days a week until 6 p.m. in order to accommodate those residents who work. City Manager Luebbbers stated this change will be accomplished with current staffing.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Study Session Summary of August 11, 2009 – Board and Commission Interviews
- Draft Minutes of August 12, 2009, Parks and Recreation Commission Meeting
- Approved Housing and Human Services Commission Minutes for Meeting of July 20, 2009

ADJOURNMENT

Mayor Spitaleri adjourned the Council meeting in honor of two firefighters who recently lost their lives while fighting fires in Southern California, and also in honor of Councilmember Hamilton's grandfather.

Councilmember Howe honored the life of Councilmember Hamilton's grandfather, Arthur Langen, who was 95 years old when he passed away earlier this week.

Mayor Spitaleri called for a moment of silence in honor of Councilmember Hamilton's grandfather and the two firefighters who lost their lives while fighting the fires in Southern California.

Mayor Spitaleri adjourned the meeting at 9:35 pm.

Kathleen Franco Simmons
City Clerk